

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATION)	
FOR BENEFICIAL WATER USE PERMIT)	FINAL ORDER
82374-s76L BY FRANK J. AND)	
PATRICIA DISTEFANO)	

* * * * *

The time period for filing exceptions, objections, or comments to the Proposal for Decision in this matter has expired. No timely written exceptions were received. Therefore, having given the matter full consideration, the Department of Natural Resources and Conservation hereby accepts and adopts the Findings of Fact and Conclusions of Law as contained in the May 4, 1994, Proposal for Decision, and incorporates them herein by reference.

WHEREFORE, based upon the record herein, the Department makes the following:

ORDER

Subject to the terms, conditions, restrictions, and limitations specified below, Beneficial Water Use Permit 82374-s76L is hereby granted to Frank J. and Patricia di Stefano to appropriate 20.00 gallons per minute up to 1.00 acre-foot per year of the waters of Little Bitterroot Lake at a point in Lot 10 of Kelseys Little Bitterroot Lake Villa Sites located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 16, Township 27 North, Range 24 West, Flathead County for domestic use in Lot 10 of Kelseys Little Bitterroot Lake Villa Sites located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 16. The means of diversion shall be a three-quarter horsepower pump with a one inch pipeline in the lake. The period

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of diversion shall be from January 1 through December 31, inclusive of each year. The priority date shall be June 26, 1992, at 3:20 p.m.

A. This permit is subject to all prior existing water rights in the source of supply. Further, this permit is subject to any final determination of existing water rights, as provided by Montana law.

B. This permit is specifically made subject to all prior Indian reserved water rights of the Confederated Salish and Kootenai Tribes in the source of supply. It is the Tribes' position that economic investments made in reliance upon this permit, do not create in the Permittees any equity or vested right against the Tribes. The Permittees are hereby notified that any financial outlay or work invested in a project pursuant to this permit is at the Permittees' risk.

Issuance of this permit by the Department shall not reduce Permittees' liability for damages caused by exercise of this permit, nor does the Department, in issuing this permit, acknowledge any liability for damages caused by exercise of this permit, even if such damage is a necessary and unavoidable consequence of the same. The Department does not acknowledge liability for any losses that Permittees may experience should they be unable to exercise this permit due to the future exercise of reserved water rights.

C. The State of Montana's jurisdiction to issue water rights within the exterior boundaries of the Flathead Reservation

has been challenged by the Confederated Salish and Kootenai Tribes in Cause No. ADV-92-745 (Montana First Judicial District Court, Lewis and Clark County, Helena, filed May 15, 1992) and in Cause No. CV-92-54-M-CCL (United States District Court, District of Montana, Missoula Division, filed May 15, 1992) which cases are currently pending. Any water right issued by the State in the absence of jurisdiction to issue the water right is void.

D. Upon a change in ownership of all or any portion of this permit, the parties to the transfer shall file with the Department of Natural Resources and Conservation a Water Right Transfer Certificate, Form 608, pursuant to Mont. Code Ann. § 85-2-424.

E. The issuance of this permit by the Department shall not reduce the Permittees' liability for damages caused by Permittees' exercise of this permit, nor does the Department in issuing the permit in any way acknowledge liability for damage caused by the Permittees' exercise of this permit.

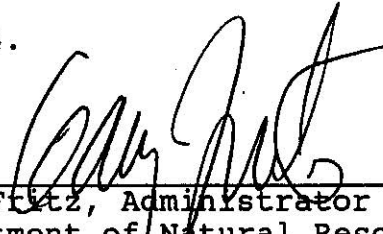
NOTICE

The Department's Final Order may be appealed in accordance with the Montana Administrative Procedure Act by filing a petition in the appropriate court within 30 days after service of the Final Order.

If a petition for judicial review is filed and a party to the proceeding elects to have a written transcription prepared as part of the record of the administrative hearing for certification to the reviewing district court, the requesting

party must make arrangements with the Department of Natural Resources and Conservation for the ordering and payment of the written transcript. If no request is made, the Department will transmit a copy of the tape of the oral proceedings to the district court.

Dated this 16 day of June, 1994.



Gary Fritz, Administrator
Department of Natural Resources
and Conservation
Water Resources Division
1520 East 6th Avenue
Helena, Montana 59620-2301
(406) 444-6605

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Final Order was duly served upon all parties of record at their address or addresses this 17th day of June, 1994 as follows:

Frank J. & Patricia di Stefano
312 6th Ave E
Kalispell, MT 59901

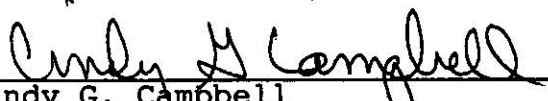
John C. Chaffin
Office of the Solicitor
U.S. Dept of Interior
P.O. Box 31394
Billings, MT 59107-1394

Joint Board of Control
P.O. Box 639
St. Ignatius, MT 59865

Jon Metropoulos
Browning, Kaleczyc, Berry
and Hoven, P.C.
P.O. Box 1697
Helena, MT 59624

Chuck Brasen, Manager
Kalispell Water Resources
Regional Office
3220 Highway 93 South
P.O. Box 860
Kalispell, MT 59903-0860
(via electronic mail)

Vivian A. Lighthizer,
Hearing Examiner
Department of Natural
Resources & Conservation
1520 E. 6th Ave.
Helena, MT 59620-2301


Cindy G. Campbell
Hearings Unit Legal Secretary

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF THE APPLICATION)	
FOR BENEFICIAL WATER USE PERMIT)	PROPOSAL FOR DECISION
82374-s76L BY FRANK J. AND)	
PATRICIA DISTEFANO)	

* * * * *

Pursuant to the Montana Water Use Act and to the contested case provisions of the Montana Administrative Procedure Act, a hearing was held in the above-entitled matter on April 12, 1994, in Kalispell, Montana, to determine whether a Beneficial Water Use Permit should be granted to Frank J. and Patricia di Stefano for the above Application under the criteria set forth in Mont. Code Ann. § 85-2-311(1) and (5) (1993).

APPEARANCES

Applicants Frank J. and Patricia di Stefano (Applicants) appeared at the hearing *pro se*.

Frank McMaster appeared at the hearing as a witness for Applicants.

Objector Joint Board of Control of the Flathead, Mission, and Jocko Irrigation Districts (Objector) appeared at the hearing by and through its hydrologist, William Slack.

Charles Brasen, Manager of the Kalispell Water Resources Regional Office of the Department of Natural Resources and Conservation (Department), appeared at the hearing.

Judy Jeniker, Water Resources Specialist with the Department's Kalispell Water Resources Regional Office, appeared at the hearing.

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Objector United States Department of Interior, Bureau of Indian Affairs (BIA), did not appear at the hearing and had contacted the Hearing Examiner by telephone on April 5, 1994, to verbally withdraw as an active party in the above-entitled matter. This was confirmed by a Notice of Withdrawal received by the Department on April 6, 1994. BIA continued its objection to the jurisdiction of the Department over water use in an area where the dominate use is for treaty recognized water rights of the Salish and Kootenai Tribes.¹

EXHIBITS

Applicants offered one exhibit for inclusion in the record which was accepted without objection.

Objector offered five exhibits for inclusion in the record which were accepted without objection.

Applicants' Exhibit 1 is a bound printed version of Applicants' testimony with references.

Objector's Exhibit 1 consists of two pages. The first page is a diagram of the Camas Division of the Flathead Irrigation District. The second page is a data sheet from the years 1956 to 1978 showing the Little Bitterroot Basin runoff and the diversion to canals.

Objector's Exhibit 2 consists of a single page which lists

¹The State of Montana's jurisdiction to issue water rights within the exterior boundaries of the Flathead Indian Reservation has been challenged by the Confederated Salish and Kootenai Tribes in Cause No. ADV-92-745 (Montana First Judicial District Court, Lewis and Clark County, filed May 15, 1992) and in Cause No. CV-92-54-M-CCL (United States District Court, District of Montana, Missoula Division, filed May 15, 1992)

the storage statistics of the Camas Division; identifies Statement of Claim 190037-76L which claims 10,000 cubic feet per second from April 1 through October 31 and a priority date of October 2, 1909; and gives a brief history of reservoir storage. The reverse of this page lists Camas Division irrigation statistics.

Objector's Exhibit 3 consists of one page which documents the storage in the reservoirs in the years 1941 to 1992. The reverse of this page sets forth the Camas Division reservoir statistics.

Objector's Exhibit 4 consists of 10 pages and is an Executive Summary of a project entitled *Flathead Irrigation Information System*.

Objector's Exhibit 5 consists of a single page which sets forth storage statistics of Camas Division reservoirs from January of 1988 through November of 1993.

The Department file was made available for review by all parties who attended the hearing. No objections were expressed to any part of the file; therefore, the Department file is accepted into the record in its entirety.

During the hearing, the Hearing Examiner expressed intent to take official notice of *In re Application 75070-s76L* by Leatzow to which there were no objections. Applicants requested she also take official notice of *In re Application 63023-s76L* by Rasmussen which she agreed to do.

PRELIMINARY MATTERS

In its Notice of Withdrawal, BIA contends that its claims for water use in the Little Bitterroot Basin show that all available water is appropriated and that the Department in its determination of actual water availability is in direct conflict with *United States v. DNRC*, No. 50612, 1st Judicial District Court, June 15, 1987. BIA contends this determination amounts to a *de facto* adjudication of BIA's water rights and that the Department does not have the jurisdiction or authority to examine, quantify, or qualify the claims of the United States or any other party to the Montana General Stream Adjudication.

In making this decision, the Department is not adjudicating the BIA's claims as contended in the Notice of Withdrawal. BIA tries to equate this case with the Don Brown case. Here, however, unlike in Don Brown, BIA has not established, in the adjudication or in these proceedings, the relationship between the extent of its claimed right and the amount of flow in the source. In fact, the flow of the Little Bitterroot River has not been measured. Given this lack of information, BIA is left only with unsubstantiated argument that all available water in the Little Bitterroot Basin is appropriated. *In re Application 75070-s76L by Leatzow.*

The Hearing Examiner, having reviewed the record in this matter and being fully advised in the premises, does hereby make the following:

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FINDINGS OF FACT

1. Montana Code Ann. § 85-2-302 states in relevant part, "Except as otherwise provided in (1) through (3) of 85-2-306, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or distribution works therefor except by applying for and receiving a permit from the department."

2. Frank J. and Patricia di Stefano duly filed the above-entitled application with the Department on June 26, 1992, at 3:20 p.m. (Department file and Applicants' Exhibit 1.)

3. Pertinent application facts were published in the *Daily Inter Lake*, a newspaper of general circulation in the area of the source on April 7, 1993. Additionally, the Department served notice by first-class mail on individuals and public agencies which the Department determined might be interested in or affected by the application. Two timely objections were received by the Department. Applicants were notified of the objections by a letter from the Department dated May 7, 1993. (Department file.)

4. Applicants seek to appropriate 20.00 gallons per minute up to 1.00 acre-foot per year of the waters of Little Bitterroot Lake at a point in Lot 10 of Kelseys Little Bitterroot Lake Villa Sites located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 16, Township 27 North, Range 24 West, Flathead County for domestic use in Lot 10 of Kelseys Little Bitterroot Lake Villa Sites located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 16. The means of diversion would be a

three-quarter horsepower pump with a one inch pipeline in the lake. The pump house, approximately four feet square, would be located at least 20 feet above the high water line. The period of diversion would be from January 1 through December 31, inclusive of each year. (Department file.)

5. Applicants own the property where the appropriation would be put to use. The domestic use would serve Applicants who plan to construct a home on the property and would use the property seasonally until their retirement when it would be used year round. Applicants did not state when retirement would occur. (Testimony of Frank di Stefano.)

6. Statement of Claim for Existing Water Right 76L-W166745-00 filed by Flathead Irrigation Project claims 10,000 cubic feet per second up to 4,237,200 acre-feet per year of the waters of Little Bitterroot Lake for irrigation served by the Flathead Irrigation District delivery system. BIA filed Statement of Claim 76L-W190037 which is identical to the claim filed by Flathead Irrigation Project. The claim includes reference to Little Bitterroot Lake as a storage facility for this water right. The claimed period of use is from April 1 through October 31. There is no period of diversion identified. However, these claims have not been examined under the Supreme Court examination rules and any inaccuracies or absences of information may be rectified when the claims are examined. (Testimony of William Slack and Judy Jeniker and Applicants' Exhibit 1.)

7. Little Bitterroot Lake was originally a natural lake

with a capacity of approximately 3,000 acre-feet. It now has an impoundment structure at its outlet which raised the surface of the water to create 26,000 acre-feet of active storage; however the natural storage cannot be released because the bottom of the gate is above the natural storage. The volume of active storage is a part of the Camas Division of the Flathead Irrigation District which supplies water to 13,170 acres. The district's reservoirs, including the active storage at Little Bitterroot Lake, have never all filled to capacity in the same season. (Testimony of William Slack, Applicants' Exhibit 1 and Objector's Exhibits 2, 3, and 5.)

8. The natural capacity of Little Bitterroot Lake is used by the Camas Division as "dead storage"; that is, it is utilized to support or "carry" the active storage. If the dead storage is reduced, the active storage which was developed by installing the dam will not be obtainable in its entirety by gravity flow through the dam outlet since the dead storage will drop the water level at the outlet. Pumping would have to be done to obtain the full amount of developed active storage. However, the record does not provide any information to suggest whether an acre-foot of water taken from the dead storage is directly translatable to loss of an acre-foot of water for irrigation due to lowering the lake level by an equivalent amount. (Testimony of Frank McMaster, William Slack, and Frank di Stefano, Applicants' Exhibit 1 and Department records.)

9. The Camas Division is served by four reservoirs, Little

Bitterroot, Hubbard, Upper Dry Fork, and Lower Dry Fork. Water is impounded in Little Bitterroot Lake, then may be routed to fill either the Hubbard Reservoir or the Lower Dry Fork Reservoir, or both, as needed. Water is also taken from the natural flow of the Little Bitterroot River, Alder Creek and Dry Fork Creek. The amount of natural flow which has been diverted for irrigation is not known. The amount of natural flow in the Little Bitterroot River is not known; the river has not been gauged. (Testimony of William Slack, Objector's Exhibits 1 and 2, and Department records.)

10. The irrigators in the Camas Division are so frugal with their water that they have been practicing deficit irrigation. They attempt to plan their quota system for three years. As an irrigation technician with the irrigation project, William Slack met with these users many times, trying to encourage them to use more of the water in the reservoirs because on years when there is a heavy snow pack, they would be losing water when the reservoirs had too much carryover from the year before. But the users have seen so many dry years they are cautious and set quotas which leave water in the reservoirs. (Testimony of William Slack and Objector's Exhibit 4.)

11. Any effect caused by Applicants' proposed appropriation would not be measurable considering the size of Little Bitterroot Lake. (Applicants' Exhibit 1, Department file, and Department records.)

12. Objector is not only concerned with the effect of

Applicants' proposed appropriation, but with the possible cumulative effect if all the cabin owners on Little Bitterroot Lake take water. (Testimony of William Slack.)

13. There are no permits issued to appropriate waters from Little Bitterroot Lake or River for which the project is still pending or planned.' (Department records.)

14. There have been no reservations of water granted for any source in the Kalispell Water Resources Division Regional Office area, which contains the Little Bitterroot Lake and River and their tributaries. (Department records.)

Based upon the foregoing Findings of Fact and upon the record in this matter, the Hearing Examiner makes the following:

CONCLUSIONS OF LAW

1. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law or rule have been fulfilled; therefore, the matter was properly before the Hearing Examiner. See Finding of Fact 3.

2. The Department has jurisdiction over the subject matter herein, and all the parties hereto. See Findings of Fact 1 and 2.

3. The Department must issue a Beneficial Water Use Permit if the Applicant proves by a preponderance of evidence that the

¹A Proposal for Decision has been issued recommending granting a permit to Frank M. and Rae K. McMaster; however that permit would be issued with a later priority date (September 21, 1992) than the instant case. A Proposal for Decision has been issued recommending granting a permit to Stan and Catherine Rasmussen which would have an earlier priority date if a permit is granted (June 16, 1986).

following criteria set forth in Mont. Code Ann. § 85-2-311(1) and (5) (1993) are met:

- (a) there are unappropriated waters in the source of supply at the proposed point of diversion:
 - (i) at times when the water can be put to the use proposed by the applicant;
 - (ii) in the amount the applicant seeks to appropriate; and
 - (iii) during the period in which the applicant seeks to appropriate, the amount requested is reasonably available;
- (b) the water rights of a prior appropriator will not be adversely affected;
- (c) the proposed means of diversion, construction, and operation of the appropriation works are adequate;
- (d) the proposed use of water is a beneficial use;
- (e) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;
- (f) the applicant has a possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use;
- (g) the water quality of a prior appropriator will not be adversely affected;
- (h) the proposed use will be substantially in accordance with the classification of water set for the source of supply pursuant to 75-5-301(1); and
- (i) the ability of a discharge permit holder to satisfy effluent limitations of a permit issued in accordance with Title 75, chapter 5, part 4, will not be adversely affected.

... (5) To meet the preponderance of evidence standard in this section, the applicant, in addition to other evidence demonstrating that the criteria of subsection (1) have been met, shall submit hydrologic or other evidence, including but not limited to water supply data, field reports, and other information developed by the applicant, the department, the U.S. geological survey, or the U.S. soil conservation service and other specific field studies.

4. An applicant is required to prove the criteria in

subsections 85-2-311(1)(g) through (i) have been met only if a valid objection is filed. A valid objection must contain substantial credible information establishing to the satisfaction of the Department these criteria, as applicable, may not be met. For the criterion set forth in subsection 85-2-311(1)(h), only the Department of Health and Environmental Sciences or a local water quality district established under Title 7, chapter 13, part 45, may file a valid objection. No valid objections relative to subsections 85-2-311(1)(g), (h), or (i) were filed for this application. Therefore, Applicants are not required to prove the criteria in subsections (1)(g), (h), or (i).

5. The proposed use of water, domestic, is a beneficial use. Mont. Code Ann. § 85-2-102(2)(a) (1993). See Finding of Fact 5.

6. The proposed means of diversion, construction, and operation of the appropriation works are adequate. See Finding of Fact 4.

7. Applicants have proven by a preponderance of evidence there are unappropriated waters in the source of supply at times when the water can be put to the use proposed, in the amount Applicants seek to appropriate, and that the amount of water requested is reasonably available during the period Applicants seek to appropriate. Applicants have shown the water is physically available at the proposed point of diversion during the period of appropriation. See Findings of Fact 7 and 11. The entire volume of Little Bitterroot Lake is physically available

to Applicants. The natural lake capacity is physically available at all times since it cannot be diverted by Objector's present diversion works, as well as whatever active storage is present in the lake at any given time. See Findings of Fact 7 and 8.

The entire volume of the natural lake capacity of Little Bitterroot Lake is also legally available to Applicants. Applicants will be drawing their water from a depth below the natural lake level, from the dead storage. Although water may be needed downstream to fulfill senior uses, water from dead storage is not physically available to the senior users through the existing means of diversion since it lies below the lake outlet nor is it a part of the appropriation right upon which Objector may call. See Findings of Fact 6, 7, 8, and 9. Since the dead storage capacity of the lake is available, and since the evidence indicates this capacity is available at all times, the criterion regarding water availability in the amounts and during the times requested by Applicants is met.

8. Applicants have proven by a preponderance of evidence the water rights of a prior appropriator would not be adversely affected by the proposed diversion. See Finding of Fact 11.

Mont. Code Ann. § 85-2-401 (1993) states, "Priority of appropriation does not include the right to prevent changes by later appropriators in the condition of water occurrence, such as the increase or decrease of streamflow or the lowering of a water table, artesian pressure, or water level, if the prior appropriator can reasonably exercise his water right under the

changed conditions."

In the instant case, it is clear that one acre-foot of water diverted out of a source the size of Little Bitterroot Lake will have an infinitesimal effect on water availability for other water users. See Findings of Fact 8 and 11. Even if the diversion of an acre-foot of water from the dead storage would lower the natural lake level and reduce the active storage by an equivalent amount, there is no basis in the record for finding the Objector could not reasonably exercise its water rights under the changed conditions. In determining whether a prior appropriator can reasonably exercise its water rights under the changed conditions which would be imposed by another's use of water from the source, courts have repeatedly used a balancing approach, taking into account such factors as the reasonableness of the senior appropriator's means of diversion, the reasonable economic reach of the parties, the balancing of the cost to senior appropriators of upgrading or replacing their diversion systems as against the value of the water thus made available for appropriation, and the necessity of maximizing beneficial use of the water resources. Montana courts require an appropriator to utilize reasonable care in constructing his diversion so that other users will not be unnecessarily deprived of the ability to obtain water. *In re Application 63023-s76L by Rasmussen. Dern v. Tanner* 60 P.2d 626 (1932).

Whether Objector's means of diversion was reasonable at the time it was installed appears arguable since the courts in

Montana and other jurisdictions have found that a means of diversion which requires the appropriator to command the whole of a source merely to facilitate the diversion of a portion of the entire flow and volume to which their senior appropriation entitles them is not a reasonable means of diversion. *Dern v. Tanner, supra; City of Colorado Springs v. Bender*, 148 Colo. 458, 366 P.2d 552 (1961).

It is evident from the record there is at times a shortage of water in the Camas Division of the Flathead Irrigation District; however, the granting or denial of the instant application will not change that fact. See Finding of Fact 10.

9. Objector's concern that Applicants' proposed appropriation may be part of a cumulative depletion effect which may be ongoing may be valid; however, Applicants have no burden to disprove potential adverse effects for possible future projects. See Finding of Fact 12; *In re Application 75070-s76L by Leatzow*; *In re Application 60117-g76L by Houston*; *In re Application 70584-g41B by Petersen Livestock*.

10. Applicants have possessory interest, or the written consent of the person with the possessory interest, in the property where the water is to be put to beneficial use. See Finding of Fact 5.

11. The proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved. See Findings of Fact 13 and 14.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Examiner makes the following:

PROPOSED ORDER

Subject to the terms, conditions, restrictions, and limitations specified below, Beneficial Water Use Permit 82374-s76L is hereby granted to Frank J. and Patricia di Stefano to appropriate 20.00 gallons per minute up to 1.00 acre-foot per year of the waters of Little Bitterroot Lake at a point in Lot 10 of Kelseys Little Bitterroot Lake Villa Sites located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Section 16, Township 27 North, Range 24 West, Flathead County for domestic use in Lot 10 of Kelseys Little Bitterroot Lake Villa Sites located in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ of said Section 16. The means of diversion shall be a three-quarter horsepower pump with a one inch pipeline in the lake. The period of diversion shall be from January 1 through December 31, inclusive of each year. The priority date shall be June 26, 1992, at 3:20 p.m.

A. This permit is subject to all prior existing water rights in the source of supply. Further, this permit is subject to any final determination of existing water rights, as provided by Montana law.

B. This permit is specifically made subject to all prior Indian reserved water rights of the Confederated Salish and Kootenai Tribes in the source of supply. It is the Tribes' position that economic investments made in reliance upon this permit, do not create in the Permittees any equity or vested

right against the Tribes. The Permittees are hereby notified that any financial outlay or work invested in a project pursuant to this permit is at the Permittees' risk.

Issuance of this permit by the Department shall not reduce Permittees' liability for damages caused by exercise of this permit, nor does the Department, in issuing this permit, acknowledge any liability for damages caused by exercise of this permit, even if such damage is a necessary and unavoidable consequence of the same. The Department does not acknowledge liability for any losses that Permittees may experience should they be unable to exercise this permit due to the future exercise of reserved water rights.

C. The State of Montana's jurisdiction to issue water rights within the exterior boundaries of the Flathead Reservation has been challenged by the Confederated Salish and Kootenai Tribes in Cause No. ADV-92-745 (Montana First Judicial District Court, Lewis and Clark County, Helena, filed May 15, 1992) and in Cause No. CV-92-54-M-CCL (United States District Court, District of Montana, Missoula Division, filed May 15, 1992) which cases are currently pending. Any water right issued by the State in the absence of jurisdiction to issue the water right is void.

D. Upon a change in ownership of all or any portion of this permit, the parties to the transfer shall file with the Department of Natural Resources and Conservation a Water Right Transfer Certificate, Form 608, pursuant to Mont. Code Ann. § 85-2-424.

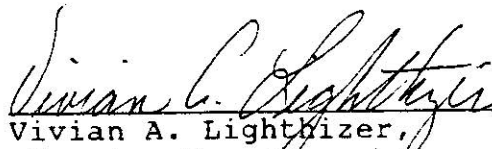
E. The issuance of this permit by the Department shall not reduce the Permittees' liability for damages caused by Permittees' exercise of this permit, nor does the Department in issuing the permit in any way acknowledge liability for damage caused by the Permittees' exercise of this permit.

NOTICE

This proposal may be adopted as the Department's final decision unless timely exceptions are filed as described below. Any party adversely affected by this Proposal for Decision may file exceptions with the Hearing Examiner. The exceptions must be filed and served upon all parties within 20 days after the proposal is mailed. Parties may file responses to any exception filed by another party. The responses must be filed within 20 days after service of the exception and copies must be sent to all parties. No new evidence will be considered.

No final decision shall be made until after the expiration of the time period for filing exceptions, and due consideration of timely exceptions, responses, and briefs.

Dated this 4th day of May, 1994.


Vivian A. Lighthizer,
Hearing Examiner
Department of Natural Resources
and Conservation
1520 East 6th Avenue
Helena, Montana 59620
(406) 444-6625

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Proposal for Decision was duly served upon all parties of record at their address or addresses this 4th day of May, 1994, as follows:


Frank J. & Patricia di Stefano
312 6th Ave E
Kalispell, MT 59901

John C. Chaffin
Office of the Solicitor
U.S. Department of Interior
P.O. Box 31394
Billings, MT 59107-1394

Joint Board of Control of
the Flathead, Mission and
Jocko Irrigation Districts
P.O. Box 639
St. Ignatius, MT 59865

Jon Metropoulos
Browning, Kaleczyc, Berry
and Hoven, P.C.
P.O. Box 1697
Helena, MT 59624

Charles F. Brasen, Manager
Kalispell Water Resources
Regional Office
P.O. Box 860
Kalispell, MT 59903
(via electronic mail)


Cindy G. Campbell
Hearings Unit Legal Secretary